LOS ANGELES BAR BULLETIN

In This Issue

VOL. 24 FEBRUARY, 1949 NO. 6

Los Angeles
BAR BULLETIN

Official Monthly Publication of The Los Angeles Bar Association. Entered as second class matter October 15, 1943, at the Postoffice at Los Angeles, California, under Act of March 3, 1879. Subscription Price $1.00 a Year; 10c a Copy.

VOL. 24 FEBRUARY, 1949 No. 6

The Lawyer As A Source Of Law

By Walter L. Nossaman, President
Los Angeles Bar Association

President Nossaman

IN TWO earlier papers (in the December, 1948 and January, 1949 BULLETIN) an endeavor was made to show that the courts, working with materials derived from custom and policy, and the varying needs or supposed needs of the social order, are the principal source of law.

What is the lawyer's part in this creative process? Some hint of the lawyer's function is suggested in Justice Cardozo's statement that "the sordid controversies of litigants are the stuff out of which great and shining truths will ultimately be

This paper concludes a series of writings into which I was propelled through duress practiced upon me by the editor, and which the indulgence of readers has privileged me to continue. Actually this particular assignment turned out to be rather interesting (to me, that is), even though the problem of meeting the next deadline has at times caused some worry. I am grateful to the many lawyers whose words of encouragement have helped to make the job seem worth doing — *Walter L. Nossaman.*

shaped." (The Nature of the Judicial Process, p. 35.) While the modern lawyer has not the privilege possessed by the Roman jurisconsults of handing down elegant opinions which have some of the characteristics of judicial precedents (Gray, The Nature and Sources of the Law, 2d ed., pp. 201, 263, 272), or, acting in the capacity of learned doctors, of deciding cases as did Portia in The Merchant of Venice, nevertheless he is an indispensable factor in supplying the raw materials out of which the law is made.

A further clue to the motive force which activates the law is found in Justice Holmes' observation that "the life of the law has not been logic; it has been experience." (The Common Law, p. 1. *Cf.* Julius Stone, Fallacies of the Logical Form in English Law, in Interpretations of Modern Legal Philosophies, p. 696.) In another place Justice Holmes says: "Every important principle which is developed by litigation is in fact and at bottom the result of more or less definitely understood views of public policy; most generally, to be sure, under our practice and traditions, the unconscious result of instinctive preferences and inarticulate convictions, but none the less traceable to views of public policy in the last analysis." (*Op. cit.*, pp. 35-36; see also p. 106.)

A sound public policy must recognize and reconcile the two great demands made upon the law which Professor Pound has described as the need of stability and the need of change. "Law must be stable and yet it cannot stand still." (Interpretations of Legal History, p. 1.) Long emancipated from the primitive concept whereby the law is attributed to prophet or sage, we now conceive of the law as a means of "striving to do justice, to satisfy demands, to secure social interests." (Pound, *op. cit.*, p. 127; see also Lord Wright, Natural Law and International Law, in Interpretations of Modern Legal Philosophies, p. 794.) Reason, motivated by good will and informed by experience and a reasonable acquaintance with legal tradition affecting the subject matter, is the means of reaching these objectives if they are to be reached at all.

Whether we consider the law as a stabilizing agency or as a dynamic force—actually it is both—we are apt to minimize the work of lawyers, attributing to the judges whatever degree of

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Thoughts On

The Tragedy of Francis Bacon —A Corrupt Chancellor

By Leon R. Yankwich, J.D., LL.D.,
Judge, U. S. District Court

Judge Yankwich*

TRAGEDY . . . comedy . . . sordidness . . . romance . . . human hopes and aspirations . . . human misery and degradations . . . human beings, not at peace, but at war with themselves, with their fellowmen and with God. . . . This is the picture which court records reflect.—a picture, at times, stranger than fiction. Like the Greek tragedies, they seem ever new, because they deal with human emotions. In them we see human beings in action. Hence the interest of all in trials, old and new. Over a period of years, I have found in old court records stories of utmost interest. Stories which, because of the nature of the matters or of the personalities involved, have constant human appeal, aside from the historic.

*Leon Rene Yankwich was born in Jassy, Roumania, on Sept. 25, 1888. His early schooling was in Roumania. He received his LL.B. from Willamette U. in 1909.

Judge Yankwich came to the U. S. in 1907, and was naturalized in 1912. He was admitted to the Oregon and California bars in 1909. He was judge of the Superior Court of Los Angeles, 1927-35, and has been judge of the U. S. District Court of Southern District of Calif. since Sept. 5, 1935.

Judge Yankwich was a lecturer on pleading and practice at St. Vincent School of Law, Loyola U., 1925-34. He is the author, with Hon. Thomas F. Griffin, of Calif. Women's 8-Hour Law, and successfully defended its constitutionality.

He served in World War I, being discharged as a sergeant in 1918. He is a member of the Southwest Academy and a Mason (32°, Scottish Rite, K.T., Shriner).

Judge Yankwich is the author of numerous books, including: The Bill of Rights, 1948; Commentary on New Federal Criminal Rules, 1946. He has contributed numerous articles on state and federal procedure, and on libel. He has also written articles on a wide range of subjects from the Code of Hammurabi to the French Revolution and Religion. He has been a contributor to the So. Calif. Law Review, Amer. Bar Jour., Georgetown University Law Quarterly, etc.

In a child custody case, 1928, he uttered the sentence now become famous: "There are no illegitimate children; only illegitimate parents."

During his 13 years on the Federal bench, Judge Yankwich has written more than 215 opinions. A recent famous case (following a long line of important decisions) is the case of U. S. v. Standard Oil Co., 78 Fed. Supp. 850, in which he held the Standard Oil Co. of Calif. guilty of anti-trust violations because of its exclusive supply contracts with 5179 filling stations.

Judge Yankwich has also been a contributor to the Bar Bulletin ever since its inception. Most of the essays which form his book on Libel first appeared in the Bulletin.

Today's comment is on the impeachment and conviction of Francis Bacon for corruption while occupying the office of Lord Chancellor. The significance of this trial lies not only in the importance of the personality of Bacon, but also in the fact that the English judiciary, for centuries, has established a high standard of rectitude. For one holding the high office of Lord Chancellor to depart from that ideal would be tragic, even in the case of the average occupant. It is greater when it involves a man who has achieved the undying fame of Bacon.

Lytton Strachey, in his "Elizabeth and Essex," deals harshly with him. He thinks that Bacon should not have consented to act as prosecutor in the trial of Essex for treason. Loyalty, he argues, should have dictated a contrary policy. For Essex had befriended him, and, for years, had tried to secure for him an official position in the legal establishment of the country.

BACON: WEAK, VACILLATING

To those who remember Bacon as Lord Chancellor and as the famous author of the Novum Organum,—which is considered by many as lying at the basis of the modern scientific method,—and of the equally famous Essays (even if we exclude those who would attribute the Shakespearean plays to him), the harshness of Strachey's strictures seemed extreme. But Strachey was not indulging in mere iconoclasm. He knew. He saw in Francis Bacon the weak, vacillating character that he was, and which he remained to the end. For history discloses that Bacon died a self-confessed felon, guilty, *according to his own confession,* of bribery and corruption in the office of Lord Chancellor.

Before referring to his impeachment and plea, I advert to some important dates in Bacon's life. He was born in London, on January 22, 1560, the youngest son of Sir Nicholas Bacon, the Lord Keeper. He entered Trinity College in April, 1573, where he showed great interest in the sciences. With his brothr Anthony, he was entered at Gray's Inn on June 27, 1576. Some months later, he was sent abroad with Sir Amyas Paullet, English Ambassador at Paris. He took up his residence at Gray's Inn in 1579, and was admitted an outer barrister in 1582. He was elected to Parliament from Dorsetshire in 1584, and from Middlesex in 1593. In 1591, he was acting as adviser to Robert,

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A Note On Natural Law

Judge John J. Ford,
of the Superior Court

Judge Ford*

THE recent comments of Walter L. Nossaman in the BAR BULLETIN on the subject of jurisprudence have served a very useful purpose if they have awakened in a substantial number of members of the bench and bar a desire to pursue more fully a study of that very useful subject.

Unfortunately, our law schools have generally failed to interest students in the systematic study of jurisprudence. "Not the study of the cases alone, nor the study of how the law operates in fact, nor the study of legal philosophy will give us a legal education. We must have all three, and in an ordered relation to one another. Jurisprudence is the ordered relation of all these studies."[1]

RESPONDENT SAYETH:

In this article, Judge Ford pens his reply to President Walter L. Nossaman's articles on Natural Law, which appeared in the October and November issues of the BAR BULLETIN.

If the law is to continue to be considered a learned profession instead of slipping more and more into the classification of a mere trade, there must be a greater general understanding of the place of legal philosophy in the life of the lawyer. Its func-

*John J. Ford was born October 10, 1907, in Los Angeles. He received an A.B. from Stanford University in 1928, and an LL.B. from Harvard University in 1931.

He was a member of Board of Editors of Harvard Law Review, 1929-31, and instructor in Law of Evidence, Loyola Law School, 1934-42.

Judge Ford was appointed to the Municipal Court in December, 1943; and in February, 1948, he was appointed Judge in the Superior Court. He is a member of the Los Angeles Bar Association, American Bar Association and American Law Institute.

[1]Hutchins, *Legal Education*, 4 U. of Chi. L. Rev. 357, 368 (1937); see Simpson, *The New Curriculum of the Harvard Law School*, 51 Harv. L. Rev. 965, 982 (1938).

tion is "to give a profitable and satisfying direction to the application of human energies in the law."[2]

It is with respect to the way in which our energies in the law should be applied that I find disagreement with Mr. Nossaman's comments on natural law. As Lon L. Fuller, now Carter Professor of General Jurisprudence in the Harvard Law School, has clearly shown, the choice open to us is between "two competing directions of legal thought which may be labelled *natural law* and *legal positivism*"—legal positivism being that line of legal thought which sharply distinguishes between the law *that is* and the law *that ought to be*.[3]

WHAT IS "NATURAL LAW"?

In making our choice of direction it is, of course, necessary to understand what is meant by the true concept of natural law. So many different ideas have masqueraded under its name that today we have a number of misconceptions of natural law. "Modern American writers have confused the scholastic concept of natural law with everything from canon law to Kant's postulates of the practical reason. The natural law according to scholastics is neither of these. Nor is it the primitive code of an aboriginal (and purely imaginative) society, nor the *jus gentium* of the Romans. In one passage of his writings, Thomas Aquinas defines the natural law simply as 'the light of the intellect . . . in virtue of which we know what must be done and what must be avoided.' For it is the intellect that discovers the natural law—not by constructing non-empirical, *a priori* absolutes—but by analyzing man himself."[4]

Many years ago Sir Frederick Pollock wrote that the various applications of the term "have tended to obscure the central idea . . . of an ultimate principle of fitness with regard to the nature of man as a rational and social being, which is, or ought to be, the justification of every form of positive law."[5]

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[2]Fuller, The Law in Quest of Itself 2 (1940).

[3]Fuller, *op. cit. supra*, note 2, at 4, 5.

[4]Mulligan, *A Note on Legal Pragmatism*, 21 Thought (Fordham Univ.) 513, 516 (1946); see Levi, *The Natural Law, Precedent, and Thurman Arnold*, 24 Va. L. Rev. 587 (1938); Palmer, Book Review, 33 A.B.A.J. 922 (1947); Maritain, The Rights of Man and Natural Law 59 (Anson's trans. 1943).

[5]Pollock, *The History of the Law of Nature*, 1 Col. L. Rev. 11 (1900); *cf.* Maritain, *op. cit. supra*, note 4, at 69: ". . . *natural law* deals with the rights and duties which follow from the first principle: 'do good and avoid evil,' in a *necessary* manner, and *from the simple fact that man is man*, nothing else being taken into account."

Notes Relating to

LEGAL HISTORY AND TRADITION

By Rex Hardy

Rex Hardy*

THE modern American lawyer is, it seems to me, so busy with his attempts to fit into a streamlined world that he too often forgets that the profession of law is an ancient and honorable profession, full of history and tradition. I suggest that a knowledge, or at least an appreciation of the history and tradition of the legal profession will tend to restore and/or maintain the cultural pride of the lawyer in his profession, now so frequently passed by in the hustle and bustle of modern life which is tending more and more to destroy the element of craftsmanship in a lawyer and make him a plain memorizer of rules and precedents.

Sir Walter Scott, in his "Guy Mannering," says:

"A lawyer without history or literature is a mechanic, a mere working mason; if he possesses some

*Rex Hardy was born in Texas, but has been a resident of Los Angeles since 1910. Law graduate of the University of Southern California, Class of 1911. Practicing lawyer in Los Angeles since graduation. Former member of Board of Trustees, Los Angeles Bar Association. Former member of Board of Governors, State Bar of California.

Enlisted in World War I, discharged a Captain of Infantry in 1919. Major in the Organized Reserves for ten years, and re-entered service in July 1942, in that rank. Resigned from the Board of Governors for that reason. He served as Director of Internal Security and Intelligence, as Provost Marshal and Judge Advocate at Fort McArthur, San Pedro, where, in November 1943 he was promoted to the rank of Lieut. Colonel. Then assigned to the School of Military Government at Charlottesville, Va.

After completion of the course in Military Government, he was sent to England where he was assigned to the General Staff of General Eisenhower's Headquarters, as Chief of Branch in charge of the policy, supervision and direction of Displaced Persons in the European Theatre.

He was awarded the Legion of Merit and the Bronze Star by General Eisenhower; the Coronne de Chene and Croix de Guerre by the Grande Duchess of Luxembourg; the Legion of Honor, the Croix de Guerre with Palm and the Medaille de Reconnaisance by the French Government; and the Corona d'Italia by the Italian Government, for his work in the handling and repatriation of Displaced Persons. He was also commended by the Dutch, Belgium and Italian Governments.

He was promoted to full Colonel on October 1, 1945. After his separation from the Service in April, 1946, he was appointed and now serves as Assistant City Attorney of The City of Los Angeles and is in charge of the legal matters involved in the Colorado River.

knowledge of these, he may venture to call himself an architect."

So, these notes have been developed with the idea that they may recall to the lawyer the prideful history and tradition of his profession, and that, in our goal for constant improvement of the administration of the law, we shall be the architects of the structure in which we live,—not merely artisans patching up obvious holes in the roof.

Whence came the lawyer of the English Common Law?

History records that in the beginning of the English Common Law all students of law,—all lawyers and all judges,—were churchmen and the mass of rules, principles and customs which formed the Common Law of England was under the sole control of the Church. After the conquest of England by William, the Conqueror, the Norman kings established their "Laws of the Realm," and another conflict between Church and State was created.

Throughout the Twelfth Century, men learned in civil and canon law—mostly churchmen—swarmed across the Channel to England for the express purpose of teaching and practicing law.

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INNS OF COURT

THIS interesting article by Colonel Rex Hardy on the historical background of the practice of law is quite timely in one sense.

The American Bar Association is conducting a campaign to collect $5 or $10 from each lawyer for the restoration of the Inns of Court, London. Contributions so far received are from $1 to $1000.

An effort is being made to collect contributions from a large number of American attorneys, as a tribute to our free system of jurisprudence.

Those interested, should send their checks to (and payable to) Lowell Wadmond, Treasurer, Fund for the Restoration of the Inns of Court (London, England), 14 Wall St., New York 5, N. Y.

Silver Memories

Compiled from the Daily Journal of February 1924,
By A. Stevens Halsted, Jr., Associate Editor

A. Stevens Halsted, Jr.

PRESIDENT COOLIDGE has sent the name of **Paul J. McCormick** to the Senate for confirmation as United States District Judge, Southern District of California. **Superior Judge McCormick** has been on the superior bench in Los Angeles for more than 10 years and is widely known among attorneys and jurists. **Judge McCormick** will fill the vacancy created by the death of Federal Judge **Oscar A. Trippet.** His associates on the federal bench in this district will be **Judges Bledsoe** and **James.**

* * *

Philip C. Sterry, formerly deputy city attorney and recently deputy county counsel, has resigned from the latter position and has become associated with the law firm of **Hill & Morgan. A. J. Hill** was formerly county counsel and **Vincent Morgan** was deputy county counsel in charge of flood control work.

* * *

Public resentment against the increasing frequency of 5 to 4 decisions of the United States Supreme Court invalidating important Congressional legislation threatens to curb or abolish the powers of the Court, former Senator **Albert J. Beveridge** of Indiana told the New York State Bar Association. "Perhaps," he said, "the justices might agree among themselves that they will not invalidate an act of Congress unless two-thirds of them agree that it is unconstitutional. Surely the overthrow of a national statute is as important

as a verdict of guilty in an impeachment trial or the rejection of a presidential veto, each of which requires a two-thirds majority." As a further remedy, **Mr. Beveridge** suggested reargument in all constitutional cases where on a first hearing the court finds a 5 to 4 decision likely. A public announcement by the Court that in all such doubtful situations, such cases might be twice argued and twice considered, would make annulment of laws, even by a judicial majority of one justice, far more acceptable to the public mind and conscience.

* * *

Henry S. McKee predicts that the population of Los Angeles will reach the two-million mark within the next 15 years. His prediction is based upon the growth which has come since 1918 when Los Angeles had a population of 500,000 and today totals more than 1,000,000.

* * *

Fifty cases each court day, or 1112 cases a month, is Judge **C. Walter Guerin's** record for January, one that has never been matched in these parts according to Clerk **Rugby Ross** of Department 26 (Law and Motion). Of these 1112 cases, 625 were actually disposed of, continuances to other dates numbered 252. Supplemental examinations were held in 29 instances and 42 cases were "submitted."

* * *

A storm of criticism has been aroused in Congress over the action of the American Bar Association in chartering the British liner Berengaria to carry members of the association to London next summer, instead of patronizing the American lines. One prominent government official has notified the association that he could not approve the arrangement made and would travel to London on an American vessel. Another official, Senator Jones, Republican of Washington, also condemned the arrangement, saying: "Suggestions that members desire to ride on British ships because of prohibition on American ships is a serious reflection upon the lawyers of the country—men who are sworn to uphold the constitution."

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Legal Ethics Opinion No. 168

DEAR MR. .....:

The letter addressed by you to the Committee on Professional Ethics of the Los Angeles Bar Association has been considered. You ask the Committee's opinion on the following fact situations:

(a) May an attorney, not admitted to the California Bar, who confines his practice exclusively to Federal income taxation by representing clients before the United States Treasury Department and The Tax Court of the United States, describe himself as a "tax attorney" on his professional card and letterhead?

(b) May he use the descriptive words "Tax Attorney—Federal Taxation Exclusively"?

(c) May he use the descriptive words "Tax Attorney—Member of the Ohio Bar"?

Your letter also stresses the fact that the attorney's practice consists solely in giving advice on Federal Tax matters and representing clients before the Bureau of Internal Revenue and in The Tax Court of the United States.

The Committee on Professional Ethics and Grievances of the American Bar Association has had occasion to consider and render an opinion on a somewhat similar situation. In its Opinion 81 it held that an attorney admitted to practice law in one state, and also admitted to practice before the Inter-State Commerce Commission, could not, after his removal to another state, properly hold himself out in the other state as a "traffic attorney" or a "traffic counsellor" even though he restricted his practice to matters within the jurisdiction of the Inter-State Commerce Commission unless he should add language which will clearly indicate that his right to practice law in the state of which he is a resident is limited to causes in the Federal Courts and before the Inter-State Commerce Commission, and that he is not admitted to practice before the Courts of that state. The Committee held that the mere prefixing of the word "traffic" to the word "attorney" does not indicate these facts; more definite language is necessary.

One member of that Committee dissented upon the ground that he doubted whether it would be possible for such a lawyer when using the term "attorney" or "counsellor" as applied to himself, to use additional language which will avoid giving the public the impression that he has the customary authority to practice in the local Courts of the state where he now resides.

The term "attorney" is generally understood to indicate that the person using such term has been admitted to the general practice of law in the locality where he holds himself out as an attorney, and the mere prefixing of the word "tax" to the word "attorney" does not in the Committee's opinion show that the lawyer in question is entitled to practice law only in a limited sphere. See also Opinion 156 of this Committee.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Article VIII, Section 3.)

Very truly yours,
GEORGE BOUCHARD,
Chairman, Committee on Ethics and Ethical Practices.

RESOLUTION

WHEREAS, the President of the Los Angeles Bar Association, with the approval of the trustees of that Association, heretofore appointed a committee under the chairmanship of Colonel Joseph N. Owen, which committee was known as the "1948 Christmas Jinx Committee" and was charged with the responsibility of preparing and staging for the benefit of the Association a Christmas Jinx Party; and

WHEREAS, said committee with the aid of various members and friends of the Association did prepare and present on December 10, 1948, at the Los Angeles Breakfast Club for the benefit of the members of said Los Angeles Bar Association, their families, and friends, said Christmas Jinx Party; and

WHEREAS, said party, and every phase thereof from the dinner to the last act of the entertainment provided, was an unqualified success and was heartily enjoyed by every person attending; and

WHEREAS, the quality of the dinner provided and the entertainment presented gave ample evidence of long and arduous

work by the chairman and every member of the Jinx Committee and by all members of the participating cast and others who so generously contributed their time and efforts:

NOW, THEREFORE, BE IT RESOLVED, that the Board of Trustees of the Los Angeles Bar Association does hereby express in behalf of the Association and every member thereof to Colonel Joseph N. Owen, Chairman of said Jinx Committee, to every member of said committee, to every person participating in the entertainment presented, and to each and every other person who contributed time, effort or necessary items of equipment, its thankful appreciation for the work done and the result accomplished.

BE IT FURTHER RESOLVED, that the President of this Association is hereby instructed and directed to transmit to the Chairman and members of said Jinx Committee, to all members of the participating casts, and to each and every person who contributed to the success of said Jinx Party, a copy of this resolution.

BE IT FURTHER RESOLVED, that the Executive Secretary of this Association is instructed and directed to cause a copy of this resolution as expressing the grateful appreciation of each and every member of the Los Angeles Bar Association to be printed in the first available future issue of the Los Angeles Bar Association BAR BULLETIN.

* * *

I hereby certify that the foregoing is a full, true and correct copy of a resolution adopted by the Board of Trustees of the Los Angeles Bar Association at its meeting on December 17, 1948, as the same appears in the records of the Los Angeles Bar Association.

J. L. ELKINS,
Executive Secretary, Los Angeles Bar Association.

SILVER MEMORIES

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On February 1st Great Britain recognized the Russian Soviet government at Moscow. Great Britain is the first of the allied and associated powers to extend recognition to the soviet regime.

THE LAWYER AS A SOURCE OF LAW

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perfection the law has attained. Without in any way minimizing the part of the judges in the development of the law, it should be remembered that in this process the lawyer has a part which though inconspicuous and soon forgotten is by no means minor. It may indeed approach full partnership in the enterprise.

Justice Harlan of the United States Supreme Court has said: "Upon the lawyer equally with the Judges rests the responsibility for an intelligent determination of causes in the Courts, whether relating to public or to private rights. It has been said of some judgments of the Supreme Court of the United States that they are not excelled by any ever delivered in the judicial tribunals of any country. Candor, however, requires the concession that their preparation was preceded by arguments at its Bar, of which may be said, what Mr. Justice Buller observed of certain judgments of Lord Mansfield, that they were of such transcendent power that those who heard them were lost in admiration 'at the strength and stretch of the human understanding.'" (Quoted in Warren, The Supreme Court in United States History, Vol. 1, p. 23; see also pp. 3, 567, 789, and Vol. 2, pp. 748, 749.)

Justice Holmes in a casual address speaks of the lawyer's function in terms which I hesitate to quote, being apprehensive that some judge, lacking more profitable employment, may read these comments. He says: "Shall I ask what a court would be, unaided? The law is made by the Bar even more than by the Bench" (Speeches (1913), p. 16).

Space limits preclude elaboration beyond saying that an examination of the briefs in many of the cases decided by John Marshall shows the extent to which even the independent mind and powerful will of that great judge were influenced by the counsel in the case.[1] Daniel Webster's great argument in the

[1]See *Marbury v. Madison*, 1 Cranch. 137 (1803); *McCulloch v. Maryland*, 4 Wheat. 316 (1819); *Gibbons v. Ogden*, 9 Wheat. 1 (1924); *Cohen v. Virginia*, 6 Wheat. 264 (1821).
In general on this topic, see Jay Monaghan, Counsel's Influence on John Marshall, in The Law Student, Jan. 1941 (Am. Law Book Co., Brooklyn). It is stated that in *McCulloch v. Maryland*, Marshall's opinion follows Webster's brief; in *Fletcher v. Peck*, 6 Cranch. 87, the arguments of J. Q. Adams, Robert Goodloe Harper and Joseph Story. In *Cohen v. Virginia*, Story's opinion in *Martin v. Hunter's Lessee*, 1 Wheat. 303, is followed, but that opinion is based on an argument made by Walter Jones. Regarding *Gibbons v. Ogden*, in which Webster was counsel, see Warren, Vol. 1, p. 610.

Dartmouth College case (4 Wheat. 518; quoted in part in Francis M. Burdick, The Lawyer in American Life, in The Making of America, Vol. 2, p. 102) has become a tradition; and the terms in which William Pinckney's plea on behalf of the Bank of the United States in *McCulloch v. Maryland* has been described by one of the judges of the court (Justice Story, quoted in Warren, The Supreme Court in United States History, Vol. 1, pp. 507-508) suggest a comparison with Thomas Erskine, the greatest forensic orator of all time. To be bracketed with these is a product of a much later time, the less spectacular but fully as effective argument of Louis D. Brandeis in the 1908 case of *Muller v. Oregon* (208 U. S. 412; see Warren, Vol. 2, p. 748; Frankfurter, Hours of Labor and Realism in Constitutional Law, 29 Harv. L. R. 353 (1916)), where that great lawyer laboriously marshalled statistics to prove the relation between the state legislation under scrutiny and the social condition which it was intended to remedy; marshalled them so effectively that he was able to bring to a realistic outlook the same court which had decided *Lochner v. New York* only three years before.

Unfortunately, there are few Websters, or Pinckneys, or Erskines, or Brandeises, just as there are few causes involving

issues which seem important to other than those immediately concerned. But every case which may reach an appellate tribunal carries the potentiality of being a precedent having the permanence which

> Not marble, nor the gilded monuments
> Of princes shall outlive * * *.

History confirms the fact that in countries on the downgrade, the deterioration of the bar hastens the process of decay. Gibbon speaks of the decline in power and influence of lawyers which accompanied the slow eclipse of the once glorious Roman civilization (Decline and Fall of the Roman Empire, Ch. 17). In so complex a matter, it is impossible to say what is cause or what effect, but the fact is that an institution whose appeal is to reason can thrive only in an atmosphere of freedom. Edmund Burke in his Speech on Conciliation with America (Writings and Speeches, Beaconsfield ed., Vol. 2, p. 124), noting that "the [legal] profession itself is numerous and powerful" in America, finds in that fact a major cause contributing to and rendering invincible the spirit of freedom. A little over a half century later, the Frenchman de Tocqueville (Democracy in America (1833), summarized in Bryce, Studies in History and Jurisprudence, pp. 319 ff.), writing his impressions of America, speaks of the lawyers as a needed stabilizing force in a democratic society (Bryce, p. 339).

History bears witness to the further fact that the most lofty aspirations toward justice fail unless they are made effective by the skill and experience which only a trained professional class can supply. The ancient Greeks, indulging in the first speculations on the nature of law and justice which have challenged the mind of man (Werner Jaeger, Praise of Law, in Interpretations of Modern Legal Philosophies, p. 352), founded no enduring legal system. The explanation, I believe, is found in the fact that "throughout Hellenic history, the law remained within the sphere of the people as a whole, of lay judges and lay orators" (Max Rheinstein, Who Watches the Watchmen?, in Interpretations of Modern Legal Philosophies, p. 600; see also Seagle, Men of Law, p. 45). The less brilliant Romans succeeded here where the Greeks failed. It is to the legal profession, rising for the first time in history in Rome, that we owe the imperial

edifice of the Roman law. A recent writer has said of the Romans that of all the peoples of antiquity, it was only they who "remained long enough on the scene of history to produce lawyers—the creative architects of mature legal systems, the indispensable midwives of a thriving commerce" (Seagle, p. 52, *op. cit., supra*).

From a distinguished Federal judge (Robert N. Wilkin, The Spirit of the Legal Profession, Yale University Press (1938), pp. 165-166), I borrow the substance of the following summary of services beneficial to mankind in which the legal profession—judges and lawyers—has played a conspicuous part.

The profession has liberated the law from mystery and superstition, and its administration from a self-appointed priestly caste, giving it to officers in some manner designated by and serving the public.

Having in the interest of stability imposed strict rules, it has superimposed equity upon them, modifying their rigors in the interests of justice.

It has powerfully aided in separating the judicial from the executive authority, substituting due process of law for the sovereign's prerogative.

It has been a moving factor in the erection of constitutions to arm justice with power.

In conclusion, it seems appropriate to say that lawyers, applying to themselves the invocation of Benjamin Cardozo to his fellow judges, are entitled not to think meanly of their calling (Growth of the Law, p. 142). The lawyer has inherited an ancient and honorable tradition—that of giving practical effect to the ideal of justice by assisting it to work effectively. He brings forward the occasions for judicial determinations which in some respect, great or small, may affect innumerable lives and fortunes. The positions he takes, reflected in decisions of the courts, become precedents determining rights in similar cases for generations to come. In his daily pursuits, he is helping to weave the majestic fabric of the law. He is entitled to a place of honor, subordinate only to that of the courts, in the law making process.

THE TRAGEDY OF FRANCIS BACON —A CORRUPT CHANCELLOR

(Continued from page 161)

Earl of Essex. Bacon had antagonized Queen Elizabeth by his opposition to a proposal in Parliament to levy a double subsidy. Essex did all in his power to induce the Queen to give Bacon the office of Master of the Rolls. Essex also deeded to him (in 1593) a piece of land near Twickenham.

With the disgrace of Essex, and his prosecution for treason in 1601, Bacon saw the opportunity to regain royal favor and to advance his own career. He became one of the Queen's counsel in the prosecution against Essex. After the accession of James I, he was knighted, in 1603. In June, 1607, he was made Solicitor of the Kingdom. In 1613, he was made Attorney General. In 1616, he was given the title of Lord Keeper. In 1617, he was made Lord Chancellor. In the same year, he was made Baron Verulam, and in January, 1620, he was made Viscount St. Albans. In the same year, he published his most important work, Novum Organum, or The Advancement of Learning, which laid the basis for the inductive method of discerning the truth.

QUALITY OF HIS MIND

The quality of his mind, he has described himself, in one of his works. Speaking of his interests while at Trinity, he wrote:

> "I found that I was fitted for nothing so well as for the study of truth; as having a mind nimble and versatile enough to catch the resemblance of things (which is the chief point) and at the time steady enough to fix and distinguish their subtler differences; as being gifted by nature with desire to seek, patience to doubt, fondness to meditate, slowness to assert, readiness to consider, carefulness to dispose and set in order; nor admits what is old and that hates every kind of imposture. So I thought my nature had a kind of familiarity and relation with Truth."

Modern historians agree that in this statement, Bacon characterized accurately his own mental make-up. Alfred North Whitehead, after placing Bacon's contributions to the modern scientific method in their proper perspective, says:

> "But when you have made all requisite deductions, Bacon remains as one of the great builders who constructed the mind of the modern world."

ARTICLES OF IMPEACHMENT

The Articles of Impeachment against him were presented by the managers of the House of Commons to the House of Lords on March 20, 1620. They contained twenty-four accusations of bribery, charging the acceptance of a total of 9,016 Pounds, a huge fortune in those days. One of the strangest things in the record is the fact that in many instances, Bacon accepted bribes from both parties to a case before him. In a cause between Sir Rowland Egerton and Edward Egerton, he received from Sir Rowland Egerton *before* "he decreed for him" 300 Pounds. From the losing party, Edward Egerton, he received 400 Pounds. In another cause, between Scott and Lenthall, he received 200 Pounds from Scott and 100 Pounds from Lenthall. The record does not say whether, as in the other case, the losing litigant paid more than the winner.

Appointed a referee in a matter involving a dispute between the grocers and apothecaries, he received from the grocers 200 Pounds and from the apothecaries 150 Pounds "besides a rich

present of ambergris." Bacon did not stop at money bribes. He accepted bribes in kind. In one instance, he accepted a dozen buttons of the value of 50 Pounds from a litigant, after a suit had ended. In a case between Kenday and Valore, he received of Kenday a cabinet worth 800 Pounds and of Valore he borrowed 2000 Pounds.

Bacon did not content himself with extorting money from litigants. For a fee, he used his high office to coerce persons. Otherwise put, Bacon used the methods of the modern racketeer. The Articles of Impeachment charged:

> "Of the French merchants, to constrain the vintners of London to take 1500 tons of wine; to accomplish which, he used very indirect means, by colour of his office and authority, without bill or other suit depending, as threatening and imprisoning the vintners, for which he received of the merchants 1000 Pounds."

RACKETS IN THE OLDEN DAYS

It is unfortunate that, in view of Bacon's plea of guilty, the details of some of these transactions were not disclosed. It would be instructive to know how rackets were worked in the olden days. One can almost visualize what took place in the case of the French merchants. Evidently, they had some agreement with the vintners of London, which the latter did not desire to fulfill. It is possible that the agreement was not enforceable in the English courts. So the French merchants,—with a realism which is reminiscent of the methods employed by some modern dominant groups to achieve results,—"hired" the Lord Chancellor, the highest judicial officer of the Kingdom, in order to achieve the results by threats and intimidations under the color of his high office.

At times we speak of rackets as though they were a modern invention. The name may be new. But the technique is old. For in the last analysis, they are methods for obtaining advantages to which one is not entitled under the law or by means not sanctioned by law. And Bacon was willing to assist in "putting over" a racket, by using his high office. His corrupting influence did not stop at himself. It extended to those about him. For he was also accused of allowing even his servants to exact tribute. The last accusation in the Articles of Impeachment was:

"That he had given way to great exactions by his servants, in respect of private seals, and scaling injunctions."

Confronted with the accusation, Bacon, at first, bargained. He wrote a pious and humble letter trying to ascertain if the Lords would not accept his "submission" as sentence, the loss of his seal as punishment, and recommend him to the King's pardon. The Lords called the answer "doubtful" and asked him whether he would confess or stand "upon his defense."

BACON ADMITTED GUILT

Bacon then abjectly admitted his guilt in a letter dated April 30, 1620.

The introduction to the letter read:

"Upon advised consideration of the Charge, descending into my own conscience, and calling my memory to account so far as I am able, I do plainly and ingenuously confess, *that I am guilty of Corruption,* and do renounce all Defence, and put myself upon the grace and mercy of your lordships."

After pleading guilty to the substance of all the charges, the letter concluded:

"For extenuation, I will use none concerning the matters themselves; only it may please your lordships, out of your nobleness, to cast your eyes of compassion upon my person and estate; I was never noted for an avaricious man, and the apostle saith, 'That covetousness is the root of all evil! I hope also that your lordships do rather find me in the state of grace, for that in all these particulars there are few or none that are not almost two years old; whereas those, that have an habit of Corruption, do commonly wax worse. So that it hath pleased God to prepare me by precedent degrees of

amendment to my present penitency; and for my estate, it is so mean and poor, as my care is now chiefly to satisfy my debts. And so fearing I have troubled your lordships too long, I shall conclude with an humble suit unto you, That if your lordships proceed to Sentence, your Sentence may not be heavy to my ruin, but gracious and mixed with mercy; and not only so, but that you would be noble intercessors for me to his majesty likewise, for his grace and favour. Your lordships' most humble servant and suppliant.

Franc. St. Albans, Cane."

FINED AND IMPRISONED

He was fined 40,000 Pounds. He was stripped of his peerage and his honors, and sentenced to imprisonment in the Tower, at the King's pleasure. The fine was later remitted. He actually served only a few days in the Tower, and was pardoned in November, 1621. He died (*some say in poverty and want*) on April 9, 1626.

And his life exemplifies the fact that intellectual brillance, even genius, *does not necessarily spell character.* The tragedy of a morally wasted life is summed up in François Villon's sad refrain: *Je cognois tous, forsque moi mesme.* (I know all but myself.)

Certainly, Bacon knew *all,* but himself. In his Essays he gave expression to the loftiest idealism. In his essay on Judicature, he speaks of "integrity" as the portion of judges, and their proper virtue and warns against improper acts by subalterns:

> *"The place of justice,"* he writes, *"is an hallowed place; and therefore not only the bench, but the foot pace and precincts, and purprise thereof, ought to be preserved without scandal and corruption."*

More is the pity. Reason may not always supply the divine spark which lights character and impels that choice which is the foundation for right action. To study truth may not always *mean to live it.* This is the lesson of Bacon's tragic fall.

A NOTE ON NATURAL LAW

(Continued from page 166)

But before any further exposition of the nature of natural law is undertaken, it is well to determine to what extent the concept is a part of our American legal tradition. Roscoe Pound has pointed out that natural law furnished the philosophical basis

of our bills of rights and that it was a most important creative force in the formative era of American law.[6] The historical background of its influence upon the development of our constitutional law has been traced in detail by Corwin;[7] its guidance has been particularly important in the field of judicial review of legislative action under the idea of due process.[8]

Turning to the field of private law for instances of influence, we have the assurance of Pollock that natural law may claim in principle "the reasonable man of English and American law and all his works" and that "the whole modern doctrine of what we now call quasi-contract rests on a bold and timely application, quite conscious and avowed, of principles derived from the Law of Nature."[9]

RELATIONSHIP OF NATURAL LAW AND POSITIVE LAW

It is essential that there be an accurate understanding of the relationship between natural law and positive law. It was the so-called natural law of rationalism, *not the traditional natural law*, which assumed that "human reason, operating in a vacuum divorced from reality, could by syllogistic processes and deduction construct legal systems complete to the last detail, leaving nothing for positive law."[10] It cannot be denied that such an individualistic natural law, permitting men to pass judgment on the humanly enacted or declared law in the light of their individual reason, would lead to anarchy.[11]

In contrast, the real, the traditional natural law contains but a few universal norms and avoids deductive extremes. It makes no pretense of furnishing an immediate, complete answer to govern each particular case as it arises.[12] It requires positive laws, the work of the human lawmaker, not as deductions from

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[6]Pound, The Formative Era of American Law 12, 17 (1938); Pound, *The Revival of Natural Law*, 17 Notre Dame Law. 287, 329 (1942). At pages 29-30 of the work first mentioned, Pound says: "A mode of thought . . . which was the theoretical basis . . . of the Declaration of Independence and bills of rights, and of the legislation, judicial decision, and doctrinal writing of the formative era of American law, is not to be rated as nothing in legal history."

[7]Corwin, *The "Higher Law" Background of American Constitutional Law*, 42 Harv. L. Rev. 149, 365 (1928-29).

[8]Grant, *The Natural Law Background of Due Process*, 31 Col. L. Rev. 56 (1931); see McKinnon, *Natural Law and Positive Law*, 23 Notre Dame Law. 125, 131 (1948); Paton, Jurisprudence 91 (1946).

[9]Pollock, *The History of the Law of Nature*, 2 Col. L. Rev. 131, 136 (1902). As further evidence of the value of the natural law approach, reference may be made to its influence on the development of equity and the law merchant (see Pound, The Formative Era of American Law 29 (1938)).

[10]Palmer, Book Review, 33 A.B.A.J. 922 (1947).

[11]See Fuller, *op. cit. supra*, note 2, at 21-22.

[12]Levi, *supra*, note 4, at 596; McKinnon, *supra*, note 8, at 136.

natural law but as determinations of it.[13] To borrow the words of Maritain, "it is *natural law itself which requires that whatever it leaves undetermined shall subsequently be determined,* either as a right or a duty existing for all men by reason of a given condition of fact, or as a right or a duty existing for certain men by reason of the human regulations proper to the community of which they are a part."[14] To take merely one concrete illustration, it is for the positive law to determine what is a proper tax statute for a particular time and place.

The positive law is, of course, subject to change in the light of experience and as the conditions and circumstances under which it is applied change. Hence, positive law cannot be everywhere the same and always perfectly static; no principle of natural law requires that law be other than an instrument for social progress.[15] Some present day legal scholars seem to assume that they have discovered something new when they ex-

[13]Rommen, The Natural Law 250-251 (Hanley's trans. 1947); *cf.* Jones, Historical Introduction to the Theory of Law 107 (1940).
[14]Maritain, *op. cit. supra,* note 4, at 70.
[15]Mulligan, *supra,* note 4, at 514; McKinnon, *supra,* note 8, at 136.

press the thought that advance in the law requires a familiarity with the other social sciences such as psychology, economics and sociology, but, as Fuller very aptly remarks, "this is only the rediscovery of a point of view which has always been taken for granted in natural-law speculation."[16]

NOSSAMAN RELIES ON BENTHAM AND KELSEN

Mr. Nossaman, in his criticism of natural law, leans rather heavily on Bentham and Kelsen. Both Pound and Pollock have, to say the least, raised a serious doubt as to whether Bentham really understood the true nature of natural law.[17] With respect to Kelsen, we have the appraisal of an English authority, Lauterpacht, that his dislike for natural law is largely rooted in the view that natural law may be and has been abused for political purposes. But, as Lauterpacht wisely comments, "exaggeration and abuse ought not to determine the fate of an otherwise beneficent idea."[18] The fact that justice is sometimes invoked by selfish interests should not lead us to dispense with it. In answer to Kelsen's assertion that natural law tends to be *anarchistic*, Fuller points out that "the existing body of positive law in general serves only to fill that comparatively narrow area of possible dispute where conflicts are not automatically resolved by a reference to tacitly accepted conceptions of rightness."[19]

Mr. Nossaman asserts that "a government of laws and not of men can exist only under a system of positive law" (See November BULLETIN, p. 60). But that appears to be a misunderstanding of the concept to which he refers, for it is clearly one of natural-law heritage; it presupposes a fundamental law above all lawmaking.[20]

However, the position taken by Mr. Nossaman becomes clearer in his next statement, a statement which should be of the greatest concern to his readers. He asserts that "the basic freedoms guaranteed by the Bill of Rights are ours through

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[16]Fuller, *op. cit. supra*, note 2, at 101-102.

[17]Pound, The Formative Era of American Law 16 (1938); Pollock, *supra*, note 9, at 131.

[18]Lauterpacht, *Kelsen's Pure Science of Law* in Modern Theories of Law 135 (1933).

[19]Fuller, *op. cit. supra*, note 2, at 110; *cf.* Pollock to Holmes (Holmes—Pollock Letters (Howe ed. 1942), vol. I, page 275): "If you deny that any principles of conduct at all are common to and admitted by all men who try to behave reasonably—well, I don't see how you can have any ethics or any ethical background for law."

[20]See Corwin, *supra*, note 7, at 155-156; Pound, *The Revival of Natural Law*, 17 Notre Dame Law. 287, 337-346 (1942); *cf.* Pound, The Spirit of the Common Law 182 (1921).

positive law." Does he mean that we have no inalienable rights, that the "rights" set forth in the Bill of Rights are ours only because of the Constitution and do not exist apart from that document? To project the same inquiry into a field in which courts are constantly settling problems of great importance to litigants—the field having to do with the rights of family life—would Mr. Nossaman argue that our traditional approach, recognizing certain rights of parents in respect to the custody and upbringing of offspring as not subject to state interference, is not sound? If so, then just as we have wondered as to the certainty of the extent of some of our ordinary rights and duties in view of the modern tendency to ignore the doctrine of *stare decisis*, we may now be concerned with the more serious problem of whether we have, in reality, any fundamental rights at all which are superior to the authority of the state.[21]

As contrasted with the true concept of natural law, legal positivism is formal and sterile. If law is to be a living, creative force, it must have some principle of growth. No such principle can be found in any theory which seeks to distinguish sharply between the law that is and the law that ought to be. "*Some* theory of liability, some philosophy of the end to be served by tightening or enlarging the circle of rights and remedies, is at the root of any decision in novel situations when analogies are equivocal and precedents are silent."[22] Natural law, not positivism, furnishes the principle of decision when legislation and precedent fall short of covering the case before the court; it meets the demand "for liberalization of law in a changing social and economic order."[23]

This rather brief discussion of the traditional natural law may well be terminated with the following pertinent words:

> ". . . to maintain that there is no such thing as natural law is tantamount to saying that we have no idea what we are doing and that there is no idea to be had; that the important thing is to move fast and that the goal is of no importance."[24]

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[21]For an excellent discussion of the subject of our inherent and inalienable rights, and the present-day attack upon them, see McKinnon, *The Higher Law*, 33 A.B.A.J. 106 (1947).

[22]Cardozo, The Growth of the Law 102 (1924).

[23]See Pound, *op. cit. supra*, note 17, at 17; Jones, *op. cit. supra*, note 13, at 132.

[24]Husik, Book Review, 31 Col. L. Rev. 341, 342 (1931).

LEGAL HISTORY AND TRADITION

(Continued from page 168)

and soon there were the common lawyers and the ecclesiastical lawyers. The common lawyers speedily made themselves masters of the English Common Law, and, because of the quarrels between State and Church, the Kings began to lean to the common law as opposed to the canon law. In 1164 Henry II decreed that the clergy be forbidden to lecture on natural philosophy and municipal law outside of their monasteries, and the church retaliated by prohibiting its scholars from appearing as advocates in the secular courts.

With such a situation Henry III, in 1234, felt strong enough to attempt to suppress all schools of law, and he banished from the walled city of London all scholars of the law and lawyers who were not under the jurisdiction of the church. Those subject to this decree moved, therefore, from the city and established themselves in what they called "hostels" or inns in and near the village of Holborn, which lay some miles outside the walls of London.

There was more than coincidence in the choice of Holborn as the place of refuge for lawyers because Holborn was near Westminster, and you will remember that the Magna Charta forced from King John in 1215 contained a clause which authorized the establishment of the Court of Common Pleas at Westminster. Thus it came about quite naturally that the colony of lawyers driven from the city should settle down near Westminster, and the basic principles and protections of the Magna Charta began to take on a meaning beyond the mere sonorous sounds of its Latin phrasing.

RISE OF KNIGHTS TEMPLAR

Other elements were a potent force in the maintenance and progress of this colony of lawyers, among which was the fact that "The Temple" erected in 1170 by the Knights Templar was located at the foot of a lane which ran from Fleet Street to the Thames River. Along this lane was a palace of the Bishop of Chichester who had been a Chancellor of England, and hence this lane came to be called "Chancellor's Lane," in time corrupted to "Chancery Lane." In and about the village of Holborn were the manor houses of the Earls of Lincoln and of the Barons Grey de Wilton, and your minds now begin to recall the

Inner and Middle Temples, Lincoln's Inn and Gray's Inn—the four great Inns of Court which today constitute the Legal University of England and its four colleges of law.

You will recall that after the siege and capture by the Crusaders of Jerusalem in 1099 a number of brotherhoods sprang into being, among which was the order known as Knights Templars—the G. A. R. and the American Legion of the Second Crusade. This order was originally highly religious in character and motives and before long the Knights Templars had their roots deep in every country of the Christian world. The Grand Master of that order, Hugues de Payens, made a visit to England in 1128 and established the first Temple of the Order in England.

From various homes the Knights Templars finally landed in what is today known as "ROUND CHURCH," built by them in 1170, and called "The Temple," and by "The Temple" the name has remained from that day to this. That "Round Church," so built in 1170 as the home of a great religious military order, is today part of "The Temple" which we are proud to call the cradle of the legal profession in England.

The Knights Templars waxed rich and powerful, and with their riches and power came autocracy. It is said that "The Temple" was "a storehouse of treasure," a place where kings and great ministers with an eye on the uncertainties of the medieval tomorrow deposited their jewels and cash. The last Crusade marked the beginning of the end for the Knights Templars. Indeed, no great movement in history has ever had such definite dates to mark its birth and death. As the Christian conquest of Jerusalem in 1099 had brought the Knights Templars into being, the fall of Acre two hundred years later, which swept the Knights Templars with the remainder of the Christian chivalry of the west from the Holy Land, anticipated by less than twenty years their final extinction.

The reason for their existence had vanished, but it is hard to read without pity and indignation the means, always cruel and not seldom treacherous, by which they were overthrown and despoiled of their vast possessions. Least of all can one blot out the page of deceit and cruelty, rare even in so callous and perfidious an age, on which is inscribed the captivity and final martyrdom at the stake of James de Molay, the last Grand Master of "The Temple," in 1313.

The pope had outlawed the Knights Templars in 1311. Edward II of England was not long in following the examples set by France and Rome in destroying the Knights Templars. Tempted, no doubt, by the fabulous treasure in "The Temple," he procured the arrest of the English Templars and the confiscation of their property, and by 1312 "The Temple" had passed into the hands of the King. Edward II, like other kings, had his favorites, and he soon granted "The Temple" to Thomas of Lancaster who seems to have been the first landlord of lawyers in "The Temple," history recording that he rented certain portions of "The Temple" to a group of lawyers in 1320.

The Pope of Rome now viewed with mingled feelings the transference of the great possessions of a religious order into secular hands and in due course he ordered that the goods and properties of the Knights Templars be transferred, bag and baggage, to the Knights-Hospitallers, the other great brotherhood born of the Crusade, which being less wealthy, proved longer lived, but the Hospitallers never obtained actual possession of more than a fraction of the riches and properties once in the hands of the Templars. Edward III, in 1340, on the point of embarking for the Continent on one of his campaigns against the French, made an absolute grant of "The Temple" to the Knights-Hospitallers in return for a contribution to his war chest.

It was the Knights-Hospitallers who, in 1347, being in quiet possession, farmed out the manor and the buildings of "The Temple" to professors and students of the law for a definite rental, and since 1347 there has been a definite record of the existence of lawyers in "The Temple." In 1947 the lawyers of the English Common Law were able to celebrate the 600th anniversary of the establishment of their permanent residence in "The Temple."

Contemporaneously with the change of scene affecting "The Temple" came the taking over of the manor houses of the Earls of Lincoln and of the Barons Grey de Wilton by groups of lawyers who established what we know today as "Lincoln's Inn" and "Gray's Inn."

The slow beginning of the professional lawyer class in England has provided a fascinating story. Under the Plantagenets the King's Court from being a feudal appanage of the King's person, became the instrument of public justice, developing into

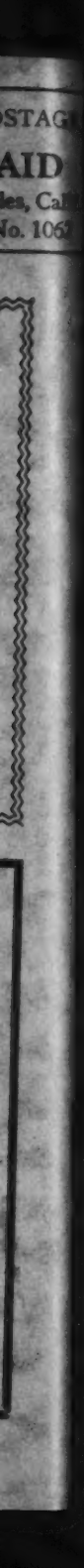
such divisions as the King's Bench and The Exchequer dealing with crimes and fiscal and other rights of the Crown, and the Common Bench concerning actions between subjects; what had been the preserve of the clergy passed into the hands of the "lawyer." Temporal pleaders seeking employment began to cluster around Westminster, borrowing from the ecclesiastic courts the functions of advocator and procurator, and familiarizing themselves, one may suppose, with those unbroken records of judicial utterances which were to broaden down through seven centuries into the Common Law of England.

That this new race of secular lawyers should form itself into little knots or clubs of professors and students, of practitioners and apprentices, was a most natural and obvious thing in that medieval world of guilds and trade unions. Small companies of practicing lawyers and those who wished to learn the art, rented or bought common premises in houses which probably were the residences of nobility, or even disused taverns, and these groups are seen first as Inns of Chancery, so called because the clerks who prepared the original writs out of chancery, by which all legal procedings were in olden times originated, used to live in them with the young apprentices whose educations commenced with the copying of writs—the same system of guild apprenticeship that made all learners begin with the most rudimentary details of their intended trade or profession. It was from Thavie's Inn of Chancery—the house of an armourer—that the small band of lawyers came to whom Thomas of Lancaster rented a portion of "The Temple" in 1320.

(To be continued in the March issue)

LINCOLN SAID IT

"Property is the fruit of labor; property is desirable; is a positive good in the world. That some should be rich shows that others may become rich, and hence is just encouragement to industry and enterprise. . . . Let not him who is houseless pull down the house of another, but let him labor diligently to build one for himself, thus by example assuring that his own shall be safe from violence. . . . I take it that it is best for all to leave each man free to acquire property as fast as he can. Some will get wealthy. I don't believe in a law to prevent a man from getting rich; it would do more harm than good."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